

STATE OF NEW YORK

5648--D

2023-2024 Regular Sessions

IN SENATE

March 10, 2023

Introduced by Sens. HOYLMAN-SIGAL, CLEARE, FERNANDEZ, HARCKHAM, JACKSON, KRUEGER, MAY, RIVERA, ROLISON, SERRANO, SKOUFIS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to prohibiting the sale of certain products that contain regulated perfluoroalkyl and polyfluoroalkyl substances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a
2 new section 37-0123 to read as follows:

3 § 37-0123. Prohibition against the sale of perfluoroalkyl and polyfluoro-
4 roalkyl substances in everyday consumer and household
5 products.

6 1. For purposes of this section, the following terms have the follow-
7 ing definitions:

8 (a) "Covered product" means textile articles, rugs, fabric treatments,
9 cookware, ski waxes, architectural paints, cleaning products, anti-fog-
10 ging sprays and wipes, dental floss, or a component thereof.

11 (b) "Regulated perfluoroalkyl and polyfluoroalkyl substances" or
12 "regulated PFAS" means PFAS that are any of the following:

13 (i) an intentionally added chemical as defined in subdivision four of
14 section 37-0121 of this title; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (ii) present in a product or product component at or above a level
2 that the department shall establish by regulation, as measured in total
3 organic fluorine, that is the lowest level that can feasibly be
4 achieved; provided, however, that the department shall review such level
5 every five years to determine whether it should be lowered.

6 (c) "Architectural paint" means interior and exterior architectural
7 coatings; provided, however, that "architectural paint" shall not
8 include industrial, original equipment or specialty coatings.

9 (d) "Children's products" means a product as defined in section
10 37-0901 of this article.

11 (e) "Cleaning product" means a finished product that is an air care
12 product, automotive product, general cleaning product, or a polish or
13 floor maintenance product used primarily for janitorial, domestic, or
14 institutional cleaning purposes. "Cleaning product" shall not mean any
15 of the following:

16 (i) foods, drugs, and cosmetics, including personal care items such as
17 toothpaste, shampoo, and hand soap; or

18 (ii) industrial products specifically manufactured for, and exclusive-
19 ly used in the following: oil and gas production; steel production;
20 heavy industry manufacturing; industrial water treatment; industrial
21 textile maintenance and processing other than industrial laundering;
22 food and beverage processing and packaging; or other industrial manufac-
23 turing processes.

24 (f) "Air care product" means a chemically formulated consumer product
25 labeled to indicate that the purpose of the product is to enhance or
26 condition the indoor environment by eliminating unpleasant odors or
27 freshening the air.

28 (g) "Automotive product" means a chemically formulated consumer prod-
29 uct labeled to indicate that the purpose of the product is to maintain
30 the appearance of a motor vehicle, as defined in section one hundred
31 twenty-five of the vehicle and traffic law, including products for wash-
32 ing, waxing, polishing, cleaning, or treating the exterior or interior
33 surfaces of motor vehicles. "Automotive product" does not include auto-
34 mobile paint or paint repair products.

35 (h) "General cleaning product" means a soap, detergent, or other chem-
36 ically formulated consumer product labeled to indicate that the purpose
37 of the product is to clean, disinfect, or otherwise care for fabric,
38 dishes, or other wares; surfaces including, but not limited to, floors,
39 furniture, countertops, showers, and baths; or other hard surfaces, such
40 as stovetops, microwaves, and other appliances.

41 (i) "Polish or floor maintenance product" means a chemically formu-
42 lated consumer product, such as polish, wax, a stripper, or a restorer,
43 labeled to indicate that the purpose of the product is to polish,
44 protect, buff, condition, temporarily seal, strip, or maintain furni-
45 ture, floors, metal, leather, or other surfaces.

46 (j) "Cookware" means durable items that are used in homes, restau-
47 rants, institutional, and commercial kitchens to prepare, dispense, or
48 store food, foodstuffs, or beverages for indoor or outdoor use. "Cook-
49 ware" includes, but is not limited to, pots, pans, skillets, grills,
50 baking sheets, baking molds, trays, bowls, camping gear, and cooking
51 utensils.

52 (k) "Fabric treatment" means a substance applied to a fabric for
53 stain, grease, or water resistance.

54 (l) "Manufacturer" means a person, firm, association, partnership or
55 corporation:

1 (i) that makes or manufactures a product or whose brand name is
2 affixed to the product; or

3 (ii) in the case of a covered product imported into the United States,
4 "manufacturer" means the importer or first domestic distributor of the
5 product if the person that manufactured or assembled the covered product
6 or whose brand name is affixed to the product does not have a presence
7 in the United States.

8 (m) "Rugs" means any consumer products made from natural or synthetic
9 fabric intended to be used as a floor covering, other than carpets, and
10 includes handmade rugs, area rugs, or mats.

11 (n) "Ski wax" means a lubricant applied to the bottom of snow runners,
12 including skis and snowboards, to improve their grip and glide proper-
13 ties.

14 (o) "Textile" means any item made in whole or in part from a natural,
15 man-made, or synthetic fiber, yarn, or fabric. Textile includes, but is
16 not limited to, the following: leather, cotton, silk, jute, hemp, wool,
17 viscose, nylon, or polyester. "Textile" does not include single-use
18 paper hygiene products, including, but not limited to, toilet paper,
19 paper towels or tissues, or single-use absorbent hygiene products. For
20 the purposes of this subdivision, "single-use" means conventionally
21 disposed of after a single use or not sufficiently durable or washable
22 to be, or not intended to be, reusable or refillable.

23 (p) "Textile articles" means textile goods customarily used in house-
24 holds and businesses including, but not limited to, handbags, luggage,
25 backpacks, draperies, shower curtains, furnishings, upholstery,
26 beddings, towels, napkins, and tablecloths. For the purposes of this
27 section, "textile articles" do not include rugs, personal protective
28 equipment, or items covered by section 37-0121 of this title.

29 (q) "Anti-fogging sprays and wipes" means any product, including a
30 spray, cloth, wipe or other material, that is intended to prevent
31 condensation on eyeglasses.

32 (r) "Dental floss" means a thread, cord, string or similar material
33 that is used for cleaning between teeth. Dental floss includes floss
34 picks and other flossing tools.

35 2. (a) Commencing on January first, two thousand twenty-six, no person
36 shall distribute, sell, or offer for sale in the state any covered prod-
37 uct that contains regulated perfluoroalkyl and polyfluoroalkyl
38 substances as defined in subparagraph (i) of paragraph (b) of subdivi-
39 sion one of this section.

40 (b) Commencing on January first, two thousand twenty-seven, no person
41 shall distribute, sell, or offer for sale in the state any covered prod-
42 uct that contains regulated perfluoroalkyl and polyfluoroalkyl
43 substances as defined in subparagraph (ii) of paragraph (b) of subdivi-
44 sion one of this section.

45 (c) The prohibition on distribution, sale or offer of sale in this
46 section does not apply to the sale or resale of used products.

47 3. (a) A manufacturer of a covered product sold into the state shall
48 provide persons that offer the product for sale or distribution in the
49 state with a certificate of compliance. The certificate of compliance
50 shall provide assurance, at a minimum, that the product does not contain
51 any regulated PFAS. Any certificate of compliance provided under this
52 section shall be signed by an authorized official of the manufacturer.

53 (b) If regulated PFAS are discovered in the covered product after the
54 issuance of the certificate of compliance, the manufacturer shall notify
55 the distributor and/or retailer, as applicable, and take back the

1 covered product. The manufacturer shall reimburse the distributor or
2 retailer, as applicable, for the covered product.

3 4. If the department has reason to believe that a covered product
4 contains regulated perfluoroalkyl and polyfluoroalkyl substances and is
5 being distributed, sold, or offered for sale in violation of this
6 section, the department shall direct the manufacturer of the covered
7 product to, within thirty days:

8 (a) provide the department with independent, third-party laboratory
9 test results demonstrating that the covered product does not contain
10 regulated PFAS; or

11 (b) comply with the procedures of paragraph (b) of subdivision three
12 of this section.

13 5. A distributor or retailer of a product, who is not also the
14 manufacturer of the product, shall not be held in violation of this
15 section if it can show that such distributor or retailer relied in good
16 faith on the certificate of compliance provided for in paragraph (a) of
17 subdivision three of this section or the retailer received a notifica-
18 tion pursuant to paragraph (b) of subdivision three of this section.

19 6. The department shall make information about any citation issued
20 pursuant to this section available to the public on its internet
21 website.

22 § 2. Section 71-3703 of the environmental conservation law is amended
23 by adding a new subdivision 8 to read as follows:

24 8. Any person who violates any of the provisions of, or who fails to
25 perform any duty imposed by section 37-0123 of this chapter or any rule
26 or regulation promulgated pursuant hereto, shall be liable for a civil
27 penalty not to exceed ten thousand dollars, and in addition thereto,
28 such person may be enjoined from continuing such violation. Such person
29 shall for a second violation be liable to the people of the state for a
30 civil penalty not to exceed twenty-five thousand dollars.

31 § 3. Paragraphs (b), (c) and (d) of subdivision 4 of section 37-0121
32 of the environmental conservation law, paragraph (b) as amended and
33 paragraphs (c) and (d) as added by chapter 111 of the laws of 2023, are
34 amended to read as follows:

35 (b) "Apparel" means clothing items intended for regular wear or formal
36 occasions including, but not limited to, undergarments, shirts, pants,
37 skirts, dresses, overalls, bodysuits, vests, dancewear, suits, saris,
38 scarves, tops, leggings, leisurewear, formal wear, outdoor apparel,
39 onesies, bibs, footwear, hats, costumes, and diapers. "Apparel" shall
40 not include:

41 (i) professional uniforms, including footwear, that are worn to
42 protect the wearer from health or environmental hazards, including
43 personal protective equipment; or

44 (ii) outdoor apparel, including footwear, for severe wet conditions.

45 (c) "Outdoor apparel" means clothing items, including footwear,
46 intended primarily for outdoor activities, including but not limited to,
47 hiking, camping, skiing, climbing, bicycling, and fishing.

48 (d) "Outdoor apparel for severe wet conditions" means outdoor apparel,
49 including footwear, that are extreme and extended use products designed
50 for outdoor sports experts for applications that provide protection
51 against extended exposure to extreme rain conditions or against extended
52 immersion in water or wet conditions, such as from snow, in order to
53 protect the health and safety of the user and that are not marketed for
54 general consumer use.

55 § 4. Subparagraphs (lx), (lxi), (lxii), (lxiii), (lxiv), (lxv),
56 (lxvi), (lxvii), (lxviii), (lxix), (lxx), (lxxi), (lxxii), (lxxiii),

1 (lxxiv), (lxxv), (lxxvi) and (lxxvii) of paragraph (b) of subdivision 1
2 of section 37-0905 of the environmental conservation law, as added by
3 section 1 of subpart AA of part XX of chapter 55 of the laws of 2020,
4 are amended to read as follows:

5 (~~lx~~) [~~Perfluorooctanoic acid (PFOA & related substances) (CAS~~
6 ~~335-67-1)~~

7 ~~(lxi) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-~~
8 ~~23-1)] Perfluoroalkyl and polyfluoroalkyl substances as defined in
9 section 37-0101 of this chapter~~

10 [~~(lxii)~~] (lxii) Phenol (CAS 108-95-2)

11 [~~(lxiii)~~] (lxiii) Phenol, 4-octyl- (CAS 1806-26-4)

12 [~~(lxiv)~~] (lxiiii) P-hydroxybenzoic acid (CAS 99-96-7)

13 [~~(lxv)~~] (lxiv) Propyl paraben (CAS 94-13-3)

14 [~~(lxvi)~~] (lxv) Styrene (CAS 100-42-5)

15 [~~(lxvii)~~] (lxvi) Tetrabromobisphenol A (CAS 79-94-7)

16 [~~(lxviii)~~] (lxvii) Tetrachloroethene (CAS 127-18-4)

17 [~~(lxix)~~] (lxviii) Toluene (CAS 108-88-3)

18 [~~(lxx)~~] (lxix) Tricresyl phosphate (TCP) (CAS 1330-78-5)

19 [~~(lxxi)~~] (lxx) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8)

20 [~~(lxxii)~~] (lxxi) Triphenyl phosphate (TPP) (CAS 115-86-6)

21 [~~(lxxiii)~~] (lxxii) Tris(1-chloro-2-propyl) phosphate (TCPP) (CAS
22 13674-84-5)

23 [~~(lxxiv)~~] (lxxiii) Tris(2-chloroethyl) phosphate (CAS 115-96-8)

24 [~~(lxxv)~~] (lxxiv) Tris(2,3-dibromopropylphosphate) (CAS 126-72-7)

25 [~~(lxxvi)~~] (lxxv) Vinyl chloride (CAS 75-01-4)

26 [~~(lxxvii)~~] (lxxvi) Organohalogen flame retardants

27 § 5. Paragraph (a) of subdivision 2 of section 37-0905 of the environ-
28 mental conservation law is amended by adding a new subparagraph (viii)
29 to read as follows:

30 (viii) Perfluoroalkyl and polyfluoroalkyl substances

31 § 6. This act shall take effect December 31, 2026. Effective imme-
32 diately, the addition, amendment and/or repeal of any rule or regulation
33 necessary for the implementation of this act on its effective date are
34 authorized to be made and completed on or before such effective date.